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Illinois Register

Rules of Governmental Agencies

Volume 23, Issue 09 — February 26, 1999

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Editor's Note: The Cumulative Index and Sections Affected Index will be printed on a quarterly basis. The printing schedule for the quarterly and annual indexes are as follows:

April	16, 1999 - Issue 16: Through	March	31, 1999
July	16, 1999 - Issue 29: Through	June	30, 1999
October	15, 1999 - Issue 42: Through	September	30, 1999
January	14, 2000 - Issue 3: Through	December	31, 1999 (Annual)

INTRODUCTION

The *Illinois Register* is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. The Register also contains a Cumulative Index listing alphabetically by agency the Parts (sets of rules) on which rulemaking activity has occurred in the current Register volume year and a Sections Affected Index listing by Title each Section (including supplementary material) of a Part on which rulemaking activity has occurred in the current volume year. Both indices are action coded and are designed to aid the public in monitoring rules.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State statute; and activities (meeting agendas, Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State agencies; is also published in the Register.

The Register is a weekly update to the *Illinois Administrative Code* (a compilation of the rules adopted by State agencies). The most recent edition of the Code along with the Register comprise the most current accounting of State agencies' rules.

The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

REGISTER PUBLICATION SCHEDULE 1999

Issue #	Copy Due by 4:30 p.m.	Publication Date	Issue #	Copy Due by 4:30 p.m.	Publication Date
Issue 1	December 21, 1998	January 4, 1999 *	Issue 28	June 28	July 9
Issue 2	December 28	January 8	Issue 29	July 6 ***	July 16
Issue 3	January 4, 1999	January 15	Issue 30	July 12	July 23
Issue 4	January 11	January 22	Issue 31	July 19	July 30
Issue 5	January 19	January 29	Issue 32	July 26	August 6
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Issue 7	February 1	February 16	Issue 34	August 9	August 20
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Issue 21	May 10	May 21	Issue 47	November 15	November 29 *
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Issue 24	June 1 ***	June 11	Issue 50	December 6	December 17
Issue 25	June 7	June 18	Issue 51	December 13	December 24
Issue 26	June 14	June 25	Issue 52	December 20	December 31
Issue 27	June 21	July 2	Issue 1	December 27	January 7, 2000

* Monday following a state holiday.

** Tuesday following a state holiday.

*** Since the state holiday is a Monday, the deadline is Noon on Tuesday.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Hearings Pursuant to Specific Rules

2) Code Citation: 35 Ill. Adm. Code 106

3) Section Numbers: Adopted Action:

106.940 New

106.942 New

106.944 New

106.945 New

106.946 New

106.948 New

106.950 New

106.952 New

106.954 New

106.956 New

106.958 New

106.960 New

106.962 New

106.966 New

106.968 New

106.970 New

106.972 New

106.974 New

106.976 New

106.978 New

106.980 New

106.982 New

4) Statutory Authority: 415 ILCS 5/52.3-2(c)

5) Effective Date of Amendments: February 16, 1999

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: September 4, 1998, 22 Ill. Reg. 15926

10) Has JCARR issued a Statement of Objections to these amendments? No

11) Differences between proposal and final version: In the table of contents, made the following changes:

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NOTICE OF ADOPTED AMENDMENTS

SUBPART K: INVOLUNTARY TERMINATION OF PROCEEDINGS-FOR ENVIRONMENTAL MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

Section

106.940 Purpose, Applicability

106.942 Definitions

106.944 Severability

106.945 Termination Under Section 52.3-4(b) of the Act

106.946 Who May Initiate, Parties

106.948 Notice, Statement of Deficiency, and Answer

106.950 Service

106.952 Notice of Hearing

106.954 Deficient Performance

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106.960 Motions, and Responses

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106.972 Authority of Hearing Officer, Board Members and Board Assistants

106.974 Order and Conduct of Hearing

106.976 Evidentiary Matters

106.978 Post-Hearing Procedures

106.980 Motion After Subsequent Entry of Final Order

106.982 Relief from Section 106.956 Final Orders

In the heading of Subpart K, made the following changes:

SUBPART K: INVOLUNTARY TERMINATION OF PROCEEDINGS-FOR ENVIRONMENTAL MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

In Section 106.940, made the following changes:

a) The purpose of this Subpart is to set forth the criteria and procedures under which the Board or the Agency may terminate for involuntary termination of an EMSA, as defined in Section 106.942 of this Subpart Part.

b) This Subpart shall apply to all proceedings to involuntarily terminate an EMSA entered into pursuant to Section 52.3-4 of the Act and 35--Ill-Adm-Code 187, except as set forth in subsection (c) of this Section.

b) When the Agency terminates an EMSA under this Part, is not applicable to any Sponsor that is subject to termination of an EMSA by the Agency pursuant to Section 52.3-4(b) of the Act, only Sections 106.942 and 106.945 of this Subpart apply.

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- c) This Subpart, except for Section 106.945, applies to proceedings in which the Board will determine whether to terminate an EMSA.

In Section 106.942, made the following changes:

For purposes of this Subpart, the words and terms used in this Subpart shall have the meanings given below. Words and terms not defined in this Subpart, if defined in the Act, shall have the meanings that the Act provides as provided in the Act.

In Section 106.942, in the definition of "Agency", made the following changes:

"Agency" "Agency" means the Environmental Protection Agency. Environmental Protection Agency established by the Act--(Section 3-146 of the Act);

In Section 106.942, in the definition of "Board", made the following changes:

"Board" means the Illinois Pollution Control Board established by the Act--(Section 5-6 of the Act);

In Section 106.942, deleted the definitions of "Director", "Environmental Management System" and "Pilot Program"

In Section 106.942, in the definition of "Environmental Management System Agreement", made the following changes:

"Environmental Management System Agreement" or "EMSA" "EMSA" means the agreement between the Agency and a sponsor entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented schedules to attain for-attaining goals, and mechanisms for accountability.

In Section 106.942, in the definition of "innovative environmental measures", replaced "Environmental Measures" with "environmental measures,".

In Section 106.942, in the definition of "pilot project", made the following changes:

"Pilot Project" "Project" means an innovative environmental project that covers covering one or more designated facilities, designed and implemented in the form of an EMSA executed--by--the--Agency--and--a sponsor--in--accordance--with--this--Part.

In Section 106.944, replaced "such" with "the".

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Added a new Section 106.945 as follows:

Section 106.945 Termination Under Section 52.3-4(b) of the Act

a) To terminate an EMSA under Section 52.3-4(b) of the Act, the Agency must determine that the sponsor's performance under the EMSA has failed to:

1) Achieve emissions reductions or reductions in discharges of wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or

2) Achieve real environmental risk reduction or foster environmental compliance by other persons regulated under this Act in a manner that is clearly superior to the existing regulatory system. (Section 52.3-1(b) of the Act)

b) If the Agency terminates an EMSA under Section 52.3-4(b) of the Act, the sponsor may, within 35 days after receipt of the Agency's notification of the termination, file an appeal with the Board. Appeals to the Board will be in the manner provided for review of permit decisions in Section 40 of the Act.

In Section 106.946, made the following changes:

a) Only the Agency may commence a proceeding to involuntarily terminate an EMSA under this Subpart may-only-be-commenced-by-the-Agency.

b) The Agency will shall be designated the complainant. The sponsor will of-an-EMSA-shall be designated asy-and-shall-be; the sole respondent.

c) Misnomer of a party is not a ground for a dismissal; the name of any party may be corrected at any time.

In the heading of Section 106.948, deleted "and".

In Section 106.948, made the following changes:

a) A proceeding to involuntarily terminate an EMSA will shall be commenced when the Agency serves by-the-service-of a notice of filing and a statement of deficiency upon the respondent and files the-filing of 10 copies of the notice of filing and statement of deficiency with the Clerk.

b) The--notice--shall--be--directed--to--the--respondent--notifying--the respondent-of-the-filing-of-the-accompanying-statement-of-deficiency;

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b) The statement of deficiency must shall contain:

- 1) The stated basis for the respondent's alleged deficient performance under as--provided--in Section 106.95(a) of this Subpart below;
- 2) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate constitute--violations--of--the provisions of the act or regulations that apply applicable to the pilot project Pilot--Project--and that the EMSA does not address addressed--by--the--EMSA;
- 3) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate constitute--violations--of the EMSA; and
- 4) With respect to subsections (b)(1) through (b)(3) text--through text--of this Section, the statement of deficiency must contain shall contain sufficient detail to advise the respondent of the extent and nature of the alleged violations to reasonably allow the respondent to prepare preparation--of a defense.

c) The respondent Respondent must file an answer within 15 days after of receipt of the statement of deficiency, unless the Board or the hearing officer extends the 15-day period for good cause. All material allegations of the statement of deficiency will complaint shall be taken as admitted if not specifically denied by the answer, or if no answer is filed. Any facts that constitute constituting an affirmative defense that which would be likely to surprise take the complainant by-surprise must be plainly set forth in the answer before prior to hearing.

In Section 106.950, made the following changes:

- a) The Agency must serve a copy of the notice of filing and statement of deficiency shall either be--served personally on the respondent or the respondent's his authorized agent, or shall--be--served by registered or certified mail with return receipt signed by the respondent or the respondent's his authorized agent. Proof must shall be made by affidavit of the person who makes making personal service, or by properly executed registered or certified mail receipt. The Agency must file proof proof of service of the notice of filing and statement of deficiency complaint--shall--be--filed with the Clerk immediately upon completion of service.
- b) The Agency and the respondent must serve After--notice--and--statement--of

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deficiency all motions and all other notices shall--be--served personally, by First Class United States mail, with sufficient postage affixed--thereof, or by overnight delivery by a nationally recognized courier service,--and The Agency and the respondent must file 10 copies of the motions and notices shall--be--filed with the Clerk with proof of service.

- c) Service is presumed complete upon personal service, four days after deposit in the United States First Class mail, with sufficient postage affixed--thereof, or the next business day upon deposit with a nationally recognized courier service for overnight delivery.

In Section 106.952, made the following changes:

- a) The Clerk will shall assign a docket number to each statement of deficiency filed, deposit--the--statement--of--deficiency--and--notice--in the--Board's--files,--and--distribute--copies--to--each--Board--Member. Any hearing will shall be held not later than 60 days after the respondent files filing of the answer notice--and--statement--of--deficiency, subject to any extensions ordered under subsection (c) of this Section.
- b) The Chairman of the Board will shall designate a hearing officer Hearing--Officer and the Clerk will shall notify the parties of the such designation. The hearing officer Hearing--Officer may be a Member of the Board if otherwise qualified.
- c) The hearing officer Hearing--Officer, after reasonable efforts to consult appropriate--consultation with the parties, will shall set a time and place for hearing to be held--within--60--days--after--the--filing of--the--statement--of--deficiency. The Board or the hearing officer may the Board--shall--not extend the time for hearing if unless all parties agree to--the--extension or there are extreme and unanticipated or uncontrollable circumstances that warrant a warranting--the delay of hearing. The Board of the hearing officer may delay the hearing more than once. In each any--such event, the Board or the hearing officer will not shall--grant--no delay the of hearing for more than in--excess of 30 additional days.
- d) The hearing will shall be held in the county in which the pilot project Pilot--Project is located, or in another such--other county that as the hearing officer designates for cause Hearing--Officer--shall--for stated--cause--designate.
- e) The hearing officer or the Clerk will Hearing--Officer--shall give notice of the hearing, at least 30 days before the hearing, to the parties under in--accordance--with Section 106.950(b) of this Subpart, and to the public by public advertisement in a newspaper of general circulation in the county in which the pilot project is located Per.

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f) The Agency must shall give notice of each statement of deficiency complaint and hearing under Section 106.950(b) at least 10 days before the hearing to:

- 1) All stakeholders named or listed in the EMSA or otherwise involved in the development of the EMSA for the Pilot Project in accordance with Section 106.950(b); and
- 2) Any person who submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card under the procedures set forth in 35 Ill. Adm. Code 187.404, if less than 100 persons attended the public hearing on the respondent's EMSA as indicated by signatures on the attendance sheet or signature cards. The poster--by public advertisement--in a newspaper of general circulation in the county in which the Pilot Project is located.
- g) Failure to comply with the provisions of this Section is not section may not be used--as a defense to an involuntary termination action under this Subpart, but the hearing officer may postpone the hearing upon the motion of any person prejudiced by a failure to comply with this Section any--person adversely affected--by--such--failure--of compliance may upon motion to the hearing officer--have--the--hearing postponed if prejudice is shown.

In Section 106.954, made the following changes:

a) For purposes of this Subpart, a respondent's the performance under its EMSA of--a--sponsor is deficient if the Agency asserts and the Board finds that any of the following conditions exist:

- 1) a) The respondent misrepresented the factual basis for entering into the EMSA was misrepresented by the sponsor.
- 2) b) The respondent sponsor has failed to provide access to the Pilot Project Pilot Project for the Agency to monitor compliance with an EMSA.
- 3) c) The respondent sponsor has falsified any monitoring data, recordkeeping information or reports regarding the Pilot Project.
- 4) d) The respondent sponsor or the owner or operator of the Pilot Project Pilot--Project--has failed to comply with any requirement one-or-more-requirements of any federal or local environmental law or regulation that applies applicable to the Pilot Project and that the EMSA does not address. Pilot-Project-and-not-addressed-by the-EMSA and for which a citizen's complaint has been filed with a court of competent jurisdiction of the appropriate authority has

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sent a notice of violation, complaint or other notice of failure to comply to the respondent sponsor or the owner or operator of the pilot project Pilot-Project.

- 5) e) The respondent sponsor or the owner or operator of the Pilot Project Pilot--Project--has failed to comply with any requirement one-or-more-requirements of any State state environmental law or regulation that applies applicable to the Pilot Project and that the EMSA does not address. Pilot-Project-and-not-addressed-by--the-EMSA and for which a citizen's complaint has been filed with the Board of the Agency has mailed a notice of violation to the respondent sponsor or the owner or operator of the Pilot Project under Pilot-Project-pursuant to Section 31(a) or (b) of the Act.
- 6) f) The respondent sponsor or owner or operator of the Pilot--Project has failed to comply with one-or-more-provisions in its EMSA, subject to any grace or cure periods or rights contained in the EMSA therein.

- b) Any Board finding of deficient performance under subsection (a)(4) or (a)(5) of this Section will not be binding for any purpose or in any other proceeding under the Act, other than under this Subpart.

In Section 106.956, made the following changes:

- a) The Board will shall prepare a written opinion and order for all final determinations that will which shall include findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law (supported by adequate reasoning) on all material issues.
- b) The Board will render its decision as expeditiously as practicable shall--order--an--EMSA-terminated-if-a-sponsor-deen-not-respond-to-the-Agency's-statement-of-deficiency-within--the--specified-time--Such order--shall-be-entered-not-later-than-30-days-after-the-filing-of-the-petition.
- c) If an answer has been timely filed by a sponsor--the The Board will shall render a final Decision as an order within 30 days after the hearing that either:
 - 1) Terminates the EMSA;
 - 2) Defers termination for a specified time, not to exceed 90 days from the date of the order order, during which the respondent sponsor may rectify the deficient performance; or
 - 3) Rejects termination of the EMSA.

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c) The Board may extend the time period under subsection (b)(2) of this Section for good cause.

d) The final Board opinion and may order may include any or all of the following:

1) Direct the respondent A--direction to cease and desist from violating provisions--of the Act, of the Board's rules--and regulations, or the provisions--of the EMSA;

2) Require the respondent to provide the imposition-of performance assurance compensation in such amounts-as appropriate amounts in each case;

3) If--the--Board--allows---respondent---on--opportunity---to---come--into compliance--the Require the respondent to post a posting--of sufficient performance bond or other security as--provided--by--the Act--or--EMSA to assure that the respondent corrects the correction of--such violation within the time that the Board prescribes prescribed; and

4) Enforce any remedy provision of the EMSA; and

5) Order such other relief as order that may be appropriate.

e) The Clerk will shall publish the order and opinion with the vote of each Board Member recorded and will shall notify the parties required to be notified of the hearing from which the order arose of the such order and opinion.

In Section 106.958, made the following changes:

The Agency has shall--have the burden to prove of--proving, by a preponderance of the evidence, that there has been deficient performance under the EMSA, as set forth in Section 106.954(a) of this Subpart.

In the heading of Section 106.960, replaced "and" with a comma.

In Section 106.960, made the following changes:

a) All motions before preliminary--to a hearing must shall be presented to the hearing officer Hearing-Officer at least 10 days before prior--to the date of the hearing.

b) The complainant's motion Motions--by complainant to voluntarily dismiss an action as to any or all claims must shall be directed to the Board and may be made orally upon the hearing record, or may be made in

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c) All motions must be served on all parties, including the Agency and its representative and the hearing officer Hearing-Officer designated by the Board, with proof of service.

d) Unless made orally on the record during a hearing or unless the hearing officer Hearing-Officer directs otherwise, a motion must shall be in writing, must shall state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on and, when appropriate, by a proposed order.

e) Within 7 days after service--of a written motion is served, or another such--other period that as the Board or hearing officer Hearing-Officer may prescribe, a party may file a response to in--support--of--or--in opposition--to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties will shall be deemed to have waived objection to the granting--of the motion, but the such waiver of objection does not bind the Board in its determination. The moving party does shall not have the right to reply, except as permitted--by the hearing officer Hearing-Officer or the Board permits.

f) No oral argument will be heard on a motion before the Board unless the Board so directs otherwise. A written brief may be filed with a motion or an answer to a motion--stating--the--arguments.

g) The hearing officer Hearing-Officer may rule upon all motions, except that the hearing officer has no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof.

h) No interlocutory appeal of a motion may be taken to the Board from a ruling of the hearing officer Hearing-Officer.

i) After the hearing, the Board may review the hearing officer's rulings. The Board rulings--of--the--hearing--officer--may--be--reviewed--by--the--Board after--conclusion--of--the--hearing--but will be set aside the hearing officer's ruling only to avoid material prejudice to the rights of a party. The hearing officer Hearing-Officer, if a member of the Board, may vote upon motions to review his or her rulings as hearing officer Hearing-Officer.

j) Unless the Board orders or this Subpart provides otherwise provided heret--or--ordered--by--the--Board, the filing of a motion will shall not stay the proceeding or extend the time to perform for--the--performance of any act.

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In Section 106.962, made the following changes:

- a) Upon timely written application and subject to the need to conduct necessity-for-conducting an orderly and expeditious hearing, the Hearing Officer Hearing-Officer will shall permit any person who a person to intervene in an involuntary termination proceeding under this Subpart if the person submitted written comments on the respondent's EMSA of participation in the public hearing on the respondent's sponsor's EMSA by signing an attendance sheet or signature card at hearing under the procedures set forth in as provided--in 35 Ill. Adm. Code 187.404, or is named or listed in the respondent's EMSA as a stakeholder, and if the Board's final order may adversely affect him or her is--so--situated--that--he--or--she--may--be adversely--affected--by--a--final--order--of--the--Board--to--intervene--in--an involuntary--termination--proceeding.
- b) The applicant must file 10 ten--(4) copies of a petition to intervene for--intervention--shall--be--filed with the Board and the applicant--shall also serve copies on each party not later than 48 hours before prior to the date--set--for hearing. The hearing officer Hearing-Officer may permit a person to intervene intervention at any time before the beginning of the hearing when that person shows good cause for the delay is--shown.
- c) An intervenor has shall--have all the rights of an original party, except that the intervenor is shall--be bound by orders theretofore issued before the hearing officer permitted the intervenor to intervene and the intervenor cannot shall--not raise issues that which attorney were raised or were required to be raised at an earlier stage of the proceeding.

In Section 106.964, made the following changes:

The hearing officer will grant a A motion to continue an for continuance--for--any involuntary termination proceeding under this Subpart when shall--be--granted--by--the--Hearing--Officer--whenever justice may required. All motions to continue for--continuance must be supported by an affidavit or written motion before the hearing officer Hearing-Officer by the person or persons with having knowledge of the facts that support supporting the motion. However, if the Board determines--in--its--discretion that any involuntary termination proceeding under this Subpart is not proceeding expeditiously to-a conclusion, the Board may shall order such actions that as it deems appropriate to expedite the proceeding reach--an--expeditious conclusion.

In Section 106.966, made the following changes:

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- a) Pre-trial--discovery Discovery, except requests to produce for production--of documents, admit facts admissions--of--fact and state the production--of the identity and location of persons with having knowledge of facts, as set forth in subsection (b) of this Section below, is shall not be permitted unless the hearing officer except--as agreed--to--by--all parties--and--directed--pursuant--to--a--Hearing--Officer orders otherwise.
- b) Regarding any matter not privileged, the hearing officer may Hearing Officer--shall order a party to produce requests--for--production--of documents and to state the production--of the identity and location of persons with having knowledge of facts upon the written request of any party when parties cannot agree on the legitimate scope of the such requests. It is not a ground for objection that the documents will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence or is relevant to the subject matter involved in the pending action.
- c) The hearing officer may Hearing-Officer--shall order a party:
 - 1) To state the--production--of the identity and location of persons with having knowledge of relevant facts.
 - 2) To produce the production--of evidence that a party controls or possesses so that it may be inspected, copied or duplicated under the central--disposition--of--any--party--for--the--purposes--of inspection--and--where--necessary--for--purposes--of--copying--or duplication. The order may grant this--shall include the right to reasonably inspect or reasonable inspection--of the pilot project Pilot-Project.
- d) The hearing officer Hearing-Officer may at any time on his or her own initiative, or on motion of any party or witness, make a protective order as justice requires. The protective order may deny, limit, condition or regulate denying--limiting--conditioning--or--regulating discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party who obtains the obtaining--such materials consistent with the provisions--of Sections 7 and 7.1 of the Act.
- e) All objections to rulings of the hearing officer must Hearing--Officer shall be made in the record.
- f) Section 35--(f)(1) Adm--Code 106.960(d), (e), (f), (g), (h), (i) and (j) of this Subpart applies shall--apply regarding procedures to rule for ruling on objections.
- g) Failure to comply with any ruling will shall subject the person to

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sanctions under 35 Ill. Adm. Code 101, Subpart J Part-487.

b) Request to Admit Facts for Admission-of-Fact. A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency filing-of-the-complaint, a written request that for-the-admission-by the letter admit of the truth of any specified relevant fact set forth in the request.

i) Request to Admit to the for-Admission-of Genuineness of Document. A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency filing-of-the-complaint, a written request to admit to for-admission-of the genuineness of any relevant documents described in the request. Copies of the document must shall be served with the request unless copies have already been furnished.

j) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 15 days after service under subsection (b) or (i) of this Section thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement that denies denying specifically the matters on of which the admission is requested or that sets forth setting-forth in detail the reasons why the party he cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If a party objects in writing written-objection to a part of the request are-made, the remainder of the request must shall be answered within the period designated in the request. A denial must shall fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, the party must he-shall specify so much of it as is true and deny the remainder. The hearing officer will hear any Any objection to a request or to an answer shall-be-heard-by-the-hearing officer upon prompt notice and motion of the party making the request.

k) Effect of Admission. Any admission made by-a-party-present-to request under this Section section is for the purpose of the pending action only. It does not constitute an admission by the party him for any other purpose and may not be used against the party him in any other proceeding.

l) Expenses of Refusal to Admit. If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters or to serve a sworn denial in response to the request thereof, and if the party requesting the admission later thereafter proves the genuineness of the document or the truth of the matter of

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fact, the latter party he may apply to the Board for an order, under 35 Ill. Adm. Code 101, Subpart J, for payment of reasonable expenses incurred Part-487.

In Section 106.968, made the following changes:

a) Upon any party's timely motion to the Board by-any-party, or on motion of the hearing officer Hearing-officer or the Board, the hearing officer Hearing-officer or the Board may shall issue a subpoena to attend for-attendance-at a hearing. The subpoena may include a command to produce evidence reasonably necessary to resolve resolution of the matter under consideration, subject to this Subpart's limitations on discovery prescribed-by-this-Subpart. A copy of the subpoena must shall be served upon the Clerk for-Board-filices. If the witness, other than a respondent sponsor of owner or operator of a pilot project, is a non-resident of the State state, the order may provide each terms and conditions regarding in-connection-with his or her appearance at the hearing that we are just, including payment of his or her reasonable expenses.

b) Every subpoena must shall state the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place therein specified.

c) The hearing officer Hearing-officer or the Board, upon motion made promptly and in any event at or before the time specified for compliance with in the subpoena for-compliance-there-with, may quash or modify the subpoena if it is unreasonable and oppressive.

d) Failure of any witness to comply with a Board subpoena will shall subject the witness to sanctions under 35 Ill. Adm. Code 101, Subpart J Part-487.

In Section 106.970, made the following changes:

a) All parties to any case in which a settlement or compromise is proposed must shall file with the Clerk before Hearing-officer-at the time of the scheduled hearing a written statement, signed by the parties or their authorized representatives, that outlines existing the nature of, the reasons for, and the purpose to be accomplished by, the settlement. This such statement must shall contain:

- 1) A full stipulation of all material facts that pertain pertaining to the nature, extent and causes of the alleged violations;
- 2) The nature of the relevant parties' operations and control equipment;

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- 3) Any explanation for past failures to comply and an assessment of the impact on the public from the failure to comply each noncompliance;
 - 4) Details about past to future plans for compliance, including a description of additional control measures and the dates on which they will be implemented for their implementation; and
 - 5) The proposed performance assurance payment, if any.
- b) No hearing is required by the Board to dismiss a complaint pursuant to an if an agreed settlement is filed under this Section, the Board may dismiss the case without holding a hearing.

In Section 106.972, made the following changes:

- a) The hearing officer has hearing officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. The hearing officer has heard or shall have all powers necessary to these ends including, but not limited to, the authority to:
 - 1) Issue discovery orders;
 - 2) Rule upon objections to discovery orders;
 - 3) Make such protective orders as justice requires, which may deny, limit condition or regulate denying, limiting, conditioning or requesting discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party who obtains the obtaining such materials;
 - 4) Administer oaths and affirmations;
 - 5) Rule upon offers of proof, and receive evidence and rule upon objections to introducing the introduction of evidence, subject to Section 106.974(b) of this Subpart;
 - 6) Regulate the course of the hearings and the conduct of the parties and their counsel;
 - 7) Examine witnesses solely to clarify for the sole purpose of clarifying the record of established by the parties at the hearing. When any party is not represented by counsel, the hearing officer hearing officer may examine and cross-examine any witness to insure a clear and complete record. However, the hearing officer hearing officer may not exclude exhibits or other

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- testimony because as a result of the his examination unless all parties so agree; and
- 8) Except as otherwise provided, consider and rule as justice may require upon motions appropriate to an adjudicative proceeding.
 - b) Any Board Member or assistant to a the Board Member present at the hearing may advise the hearing officer hearing officer and may interrogate witnesses but does shall not have the authority to rule on objections or motions or to overrule the hearing officer hearing officer during the hearing.

In Section 106.974, made the following changes:

- a) The following will shall be the order of all involuntary termination hearings under this Subpart, unless modified by subject to modification by the hearing officer hearing officer for good cause:
 - 1) Present, argue and dispose presentation-argument-and-disposition of preliminary motions on preliminary-to-a-hearing-the-substantive of the matters that referred-in the statement of deficiency raised complaint;
 - 2) Present presentation-of opening statements;
 - 3) Complainant's case in chief;
 - 4) Respondent's case in chief;
 - 5) Complainant's case in rebuttal;
 - 6) Statements from interested citizens, as authorized by the hearing officer authorizes hearing officer;
 - 7) Complainant's opening argument, which may include legal argument;
 - 8) Respondent's closing argument, which may include legal argument;
 - 9) Complainant's closing argument, which may include legal argument;
 - 10) Present and argue presentation-and-argument-of all motions before submitting prior-to-submission-of the transcript to the Board; and
 - 11) A schedule to submit for-submission-of briefs to the Board.
- b) All hearings under this Subpart will Part-shall be public, and any person not a party and not otherwise a witness for a party may submit written statements relevant to the subject matter of the hearing. Any

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Party may cross-examine any person who submits submitting--such a statement may--be--subject-to-cross-examination-by-any-party. If the each person is not available to be cross-examined for cross-examination upon timely request, the written statement may be stricken from the record. The hearing officer will Hearing--Officer shall permit any person to offer reasonable oral testimony whether or not a party to the proceedings.

c) All witnesses will shall be sworn.

d) At Upon the conclusion of the hearing, the hearing officer will Hearing--Officer--shall make a statement about as to the credibility of witnesses. This statement will shall be based upon the hearing officer's his legal judgment and experience and will shall indicate whether he or she finds credibility to be at issue in the case and if so, the reasons why. This statement will shall become a part of the official record and will shall be transmitted by the hearing officer Hearing--Offices to each of the parties in--the--case. No other statement will shall be made or be appropriate unless the Board orders otherwise ordered-by-the-Board.

In Section 106.976, made the following changes:

The provisions of 35 Ill. Adm. Code Sections 103.204 through 103.210 regarding admissible evidence, written narrative testimony, official notice, viewing of premises, admitting admission-of business records, examining adverse Parties or agents and examination-of-adverse-party or-agency hostile witnesses and compelling them to appear appearance thereof at hearing, and amendment and variance of pleadings and proof will shall apply to proceedings under this Subpart.

In Section 106.978, deleted "Sections" and replaced "shall" with "will".

In the heading of Section 106.980, replaced "Subsequent to" with "After".

In Section 106.980, made the following changes:

Within 35 35 days after the Board adopts adoption-of a final order, any party may file motion to Enforce, modify or vacate fee--rehearing, or other motions of the order motion must shall be filed within 14 14 days after the motion is filed from-the-filing-thereof. A motion after the motion is filed from-the-filing-thereof. A motion filed within 35 35 days stays enforcement of the final order.

In Section 106.982, made the following changes:

a) The Board may at any time correct clerical--mistakes--in-orders-or-other parts-of-the-record-and errors in orders or other parts of the record

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that arise therein--arising from oversight or omission of clerical mistakes. may-be-corrected-by-the-Board-at-any-time-of The Board may do so on its own initiative or on the motion of any party and after each notice, if any, as the Board orders. During the pendency of an appeal, the Board may correct the such mistakes may-be-corrected before the appeal is docketed in the appellate court.,y-and--thereafter while the appeal is pending, the Board may correct the mistakes may-be-corrected with leave of the appellate court.

b) On motion and upon each terms that as are just, the Board may relieve a party or a party's his legal representative from a final order, for the following:

1) Newly discovered evidence that which by due diligence could not have been discovered in time under Section 106.956 of this Subpart; or

2) Misconduct (whether previously heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or

3) Void order.

c) A motion under this Section section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the Board entered the order was--entered but the motion is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties must to the motion--shall be notified under as-provided-by Section 106.950(b) of this Subpart.

d) This motion must shall be filed with the Board within 60 90 days after entry of the order.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will these amendments replace an emergency rule currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments: For a more detailed discussion of the amendments, please refer to the Illinois Pollution Control Board's opinion and order at first notice (August 20, 1998), its opinion and order at second notice (December 17, 1998), and its final opinion and order (February 4, 1998). Copies of these opinions and orders may be obtained as described below.

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Between the Environmental Management System Agreement (EMSA) is an agreement between the Illinois Environmental Protection Agency (Agency) and a regulated entity. The EMSA allows the regulated entity, referred to as a "sponsor," to implement alternatives to ordinarily applicable environmental law or regulations. These alternatives should yield greater environmental benefits than would the entity's compliance with ordinarily applicable regulations. The sponsor must submit a proposal to the Board or the Agency, which may then initiate the proposed procedure under which the Board or the Agency may terminate an EMSA without a sponsor's consent (i.e., "involuntarily").

There are two types of involuntary termination: (1) termination of an EMSA by Board order; and (2) termination of an EMSA under Section 52.3-4(b) of the Environmental Protection Act (Act), 415 ICS 5/52.3-4(b), which the Agency executes without a Board order.

The first type of involuntary termination requires the Agency to request the Board to terminate the EMSA. If the Agency wishes to have the Board terminate an EMSA, the Agency must follow the procedures set forth in the rules besides Section 106.945. See Section 106.940(C). The rules govern the involuntary termination proceedings from the initial filing with the Board through the Board's decision and after the Board enters its final order (e.g., motion to rehear or modify the order). The rules are modeled on the rules of the Texas Administrative Code, Title 41, Part 103, Subpart A-E). However, the rules have shorter and more specific timeframes, and fewer, or more limited, procedural mechanisms than Part 103.

In the second type of involuntary termination, the Agency may terminate the ENSA without a Board order. The Agency may do so when the sponsor's performance of the ENSA is so deficient that it "prevents achievement" of the purposes of the ENSA program as set forth in Section 52.3-1(b) of the Act. See 415 ICs 5/52.3-1(b) and 52.3-4(b).

Section 106.945 of the rules addresses the criteria that the Agency must apply to terminate an EMSA under Section 52.3-4(b) of the Act and provides that these terminations may be appealed to the Board in the manner provided for review of permit decisions in Section 40 of the Act, 415 ICS 5/40. See Sections 106.940(b) and 106.945.

16) Information and questions regarding these adopted amendments shall be directed to:

Richard R. McGill, Jr., Attorney
Illinois Pollution Control Board
100 W. Randolph Street
Suite 11-500
Chicago, IL 60601
312/814-6983

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Requests for copies of any of the Illinois Pollution Control Board's opinions and orders in R99-9 should be directed to Victoria Agveman at 312-814-3620 or at the above address and should refer to docket R99-9.

The full text of the Adopted Amendments begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER 1: POLLUTION CONTROL BOARD

PART 106
HEARINGS PURSUANT TO SPECIFIC RULES

SUBPART A: HEATED EFFLUENT DEMONSTRATIONS

Section

106.101 Petition
106.102 Requirements for Petition
106.103 Parties
106.104 Recommendation
106.105 Notice and Hearing
106.106 Transcripts
106.107 Opinion and Order

SUBPART B: ARTIFICIAL COOLING LAKE DEMONSTRATIONS

Section

106.201 Petition
106.202 Notice and Hearing
106.203 Transcripts
106.204 Effective Date

SUBPART C: SULFUR DIOXIDE DEMONSTRATIONS

Section

106.301 Petition
106.302 Requirements for Petition
106.303 Parties
106.304 Recommendation
106.305 Notice and Hearing
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SUBPART D: RCRA ADJUSTED STANDARD PROCEDURES

Section

106.401 Petition (Repealed)
106.402 Notice of Petition (Repealed)
106.403 Recommendation (Repealed)
106.404 Response (Repealed)
106.405 Public Comment (Repealed)
106.406 Public Hearings (Repealed)
106.407 Decision (Repealed)
106.408 Appeal (Repealed)
106.410 Scope and Applicability

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106.411 Joint or Single Petition
106.412 Request to Agency to Join as Co-Petitioner
106.413 Contents of Petition
106.414 Response and Reply
106.415 Notice and Conduct of Hearing
106.416 Opinions and Orders

SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section

106.501 Scope and Applicability
106.502 Joint or Single Petition
106.503 Request to Agency to Join As Co-Petitioner
106.504 Contents of Petition
106.505 Response and Reply
106.506 Notice and Conduct of Hearing
106.507 Opinions and Orders

SUBPART F: WATER WELL SETBACK EXCEPTION PROCEDURES

Section

106.601 Scope and Applicability
106.602 Contents of Petition
106.603 Response and Reply
106.604 Notice and Conduct of Hearing
106.605 Opinions and Orders

SUBPART G: ADJUSTED STANDARDS

Section

106.701 Applicability
106.702 Definitions
106.703 Joint or Single Petition
106.704 Request to Agency to Join As Co-Petitioner
106.705 Petition Contents
106.706 Petition Verification
106.707 Federal Procedural Requirements
106.708 Incorporated Material
106.709 Motions
106.710 Service of Filings
106.711 Petition Notice
106.712 Proof of Petition Notice
106.713 Request for Public Hearing
106.714 Agency Response
106.715 Amended Petition and Amended Response
106.801 Hearing Scheduled
106.802 Hearing Notice
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106.804 Discovery
 106.805 Admissible Evidence
 106.806 Order of Hearing
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 106.802 Demand Decision
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 106.806 Effect of Filing a Petition
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SUBPART H: REVOCATION AND REOPENING OF CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

Section
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 106.911 Definitions
 106.912 Petition
 106.913 Response and Reply
 106.914 Notice and Hearing
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SUBPART I: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

Section
 106.920 Applicability
 106.921 Definitions
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SUBPART J: CULPABILITY DETERMINATIONS

Section
 106.930 Applicability
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SUBPART K: INVOLUNTARY TERMINATION OF ENVIRONMENTAL MANAGEMENT SYSTEM AGREEMENTS (EMSA's)

Section

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106.940 Purpose, Applicability
 106.941 Definitions
 106.942 Severability
 106.943 Termination Under Section 52.3-4(b) of the Act
 106.944 Who May Initiate Parties
 106.945 Notice, Statement of Deficiency, Answer
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 106.974 Order and Conduct of Hearing
 106.976 Evidentiary Matters
 106.978 Post-Hearing Procedures
 106.980 Motion After Entry of Final Order
 106.982 Relief from Section 106.956 Final Orders

APPENDIX A Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, 39.5 and 52.3 and authorized by Sections 26, 39.5 and 52.3 of the Environmental Protection Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, 26, 39.5 and 52.3]

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 196, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. ~~2697~~ ²⁶⁹⁷, effective ~~_____~~ ^{FEB 10 1999}.

SUBPART K: INVOLUNTARY TERMINATION OF ENVIRONMENTAL MANAGEMENT SYSTEM AGREEMENTS (EMSA's)

Section 106.940 Purpose, Applicability

a) The purpose of this Subpart is to set forth the criteria and

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procedures under which the Board or the Agency may terminate an EMSA, as defined in Section 106.942 of this Subpart.

a) When the Agency terminates an EMSA under Section 52.3-4(b) of the Act, only Sections 106.942 and 106.945 of this Subpart apply.

b) This Subpart, except for Section 106.945, applies to proceedings in which the Board will determine whether to terminate an EMSA.

- b) When the Agency terminates an EMSA under Section 52.3-4(b) of the Act, only Sections 106.942 and 106.945 of this Subpart apply.
- c) This Subpart, except for Section 106.945, applies to proceedings in which the Board will determine whether to terminate an EMSA.

(Source: Added)	23	Ill.	Req.
2097-			effective

Section 106.942 Definitions

For purposes of this Subpart, the words and terms used in this Subpart have the meanings given below. Words and terms not defined in this Subpart, if defined in the Act, have the meanings that the Act provides.

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" means the Environmental Protection Agency.

"Board" means the Pollution Control Board.

"Clerk" means the Clerk of the Board.

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied.

"pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA.

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

(Source: Added at 23 Ill. Reg. 2001, effective FEB 16 1999)

Section 106.944 Severability

if any provision of this Subpart is adjudged invalid, or if its application to any person or in any circumstance is adjudged invalid, the invalidity does not

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effect the validity of this Subpart as a whole, or any Section, subsection, sentence or clause not adjudged invalid.

(Source: Added at 23 Ill. Reg. 2697- , effective

Section 106.945 Termination Under Section 52.3-4(b) of the Act

a) To terminate an EMSA under Section 52.3-4(b) of the Act, the Agency must determine that the sponsor's performance under the EMSA has failed to:

- 1) Achieve emissions reductions or reductions in discharges of wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or
- 2) Achieve real environmental risk reduction or foster environmental compliance by other persons regulated under this Act in a manner that is clearly superior to the existing regulatory system. (Section 32.3-1(b) of the Act)

2) Achieve real environmental risk reduction or foster environmental compliance by other persons regulated under this Act in a manner that is clearly superior to the existing regulatory system. (Section 52.3-1(b) of the Act)

b) If the Agency terminatee an EMSA under Section 52.3-41(b) of the Act, the sponsor may, within 35 days after receipt of the Agency's notification of the termination, file an appeal with the Board. Appeals to the Board will be in the manner provided for review of permit decisions in Section 40 of the Act.

(Source: Added 23
FEB 16 1999
Ill. Reg. 2697 = , effective

Section 106.946 Who May Initiate, Partlee

- a) Only the Agency may commence a proceeding to terminate an FNSA under this Subpart.
- b) The Agency will be designated the complainant. The sponsor will be designated the respondent.
- c) Misnomer of a party is not a ground for a dismissal; the name of any party may be corrected at any time.

b) The Agency will be designated the complainant. The sponsor will be designated the respondent.

c) Misnomer of a party is not a ground for a dismissal; the name of any party may be corrected at any time.

(Source: Added at 23 Ill. Reg. 2697, effective FEB 16 1999)

Section 106.948 Notice, Statement of Deficiency, Answer

- a) A proceeding to terminate an EWSA will be commenced when the Agency serves a notice of filing and a statement of deficiency upon the respondent and files 10 copies of the notice of filing and statement of deficiency with the Clerk.
- b) The statement of deficiency must contain:
- 1) The stated basis for the respondent's alleged deficient

b) The statement of deficiency must contain:

1) The stated basis for the respondent's alleged deficient

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2) The date, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate provisions of the Act or regulations that apply to the pilot project that the EMSA does not address;

3) The date, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate the EMSA; and

4) With respect to subsections (b)(1) through (b)(3) of this Section, the statement of deficiency must contain sufficient detail to advise the respondent of the extent and nature of the alleged violations to reasonably allow the respondent to prepare a defense.

c) The respondent must file an answer within 15 days after receipt of the statement of deficiency, unless the Board or the hearing officer extends the 15-day period for good cause. All material allegations of the statement of deficiency will be taken as admitted if not specifically denied by the answer, or if no answer is filed. Any facts that constitute an affirmative defense that would be likely to surprise the complainant must be plainly set forth in the answer before hearing.

(Source: Added at 23 Ill. Reg. 2697 = effective
FEB 16 1989)

Section 106.950 Service

a) The Agency must serve a copy of the notice of filing and statement of deficiency either personally on the respondent or the respondent's authorized agent, or by registered or certified mail with return receipt signed by the respondent or the respondent's authorized agent. Proof must be made by affidavit of the person who makes personal service, or by properly executed registered or certified mail receipt. The Agency must file proof of service of the notice of filing and statement of deficiency with the Clerk immediately upon completion of service.

b) The Agency and the respondent must serve all motions and all other notices personally, by First Class United States mail, with sufficient postage, or by overnight delivery by a nationally recognized courier service. The Agency and the respondent must file 10 copies of the motions and notices with the Clerk with proof of service.

c) Service is presumed complete upon personal service, four days after deposit in the United States First Class mail, with sufficient postage, or the next business day upon deposit with a nationally recognized courier service for overnight delivery.

(Source: Added at 23 Ill. Reg. 2697 = effective

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Section 106.952 Notice of Hearing

a) The Clerk will assign a docket number to each statement of deficiency filed. Any hearing will be held not later than 60 days after the respondent files the answer, subject to any extensions ordered under subsection (c) of this Section.

b) The Chairman of the Board will designate a hearing officer and the Clerk will notify the parties of the designation. The hearing officer may be a Member of the Board if otherwise qualified.

c) The hearing officer, after reasonable efforts to consult with the parties, will set a time and place for hearing. The Board or the hearing officer may extend the time for hearing if all parties agree that there are extreme and unanticipated or uncontrollable circumstances that warrant a delay. The Board or the hearing officer may delay the hearing more than once. In each event, the Board or the hearing officer will not delay the hearing for more than 30 days.

d) The hearing will be held in the county in which the pilot project is located, or in another county that the hearing officer designates for the hearing.

e) The hearing officer or the Clerk will give notice of the hearing, at least 30 days before the hearing, to the parties under Section 106.950(b) of this Subpart, and to the public by public advertisement in a newspaper of general circulation in the county in which the pilot project is located.

f) The Agency must give notice of each statement of deficiency and hearing under Section 106.950(b) at least 10 days before the hearing to:

- 1) All stakeholders named or listed in the EMSA; and
- 2) Any person who submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card under the procedures set forth in 35 Ill. Adm. Code 187.404, if less than 100 persons attended the public hearing on the respondent's EMSA as indicated by signatures on the attendance sheet or signature cards.

g) Failure to comply with this Section is not a defense to an involuntary termination action under this Subpart, but the hearing officer may postpone the hearing upon the motion of any person prejudiced by a failure to comply with this Section.

(Source: Added at 23 Ill. Reg. 2697 = effective
FEB 16 1989)

Section 106.954 Deficient Performance

g) For purposes of this Subpart, a respondent's performance under its

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EMSA is deficient if the Agency asserts and the Board finds that any of the following conditions exist:

- 1) The respondent misrepresented the factual basis for entering into the EMSA.
- 2) The respondent failed to provide access to the pilot project for the Agency to monitor compliance with an EMSA.
- 3) The respondent falsified any monitoring data, recordkeeping information or reports regarding the pilot project.
- 4) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any Federal or local environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with a court of competent jurisdiction, or the appropriate authority has sent a notice of violation, complaint or other notice of failure to comply to the respondent or the owner or operator of the pilot project.
- 5) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any State environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with the Board or the Agency has mailed a notice of violation to the respondent or the owner or operator of the pilot project under Section 31(a) or (b) of the Act.
- 6) The respondent failed to comply with its EMSA, subject to any grace or cure periods or rights contained in the EMSA.
- 7) Any Board finding of deficient performance under subsection (a)(4) or (a)(5) of this Section will not be binding for any purpose or in any other proceeding under the Act, other than under this Subpart.

(Source: Added at 23 Ill. Reg. 269 7, effective 11/1/1993)

Section 106.956 Board Decision

- a) The Board will prepare a written opinion and order for all final determinations that will include findings of fact [with specific page references to principal supporting items of evidence in the record] and conclusions of law (supported by adequate reasoning) on all material issues.
- b) The Board will render its decision as expeditiously as practicable. The Board will render a decision as an order that:
 - 1) Terminates the EMSA;
 - 2) Defers termination for a specified time, not to exceed 90 days from the date of the order, during which the respondent may rectify the deficient performance; or
 - 3) Rejects termination of the EMSA.
- c) The Board may extend the time period under subsection (b)(2) of this Section for good cause.

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- d) The Board may order any or all of the following:
 - 1) Direct the respondent to cease and desist from violating the Act, the Board's regulations, or the EMSA;
 - 2) Require the respondent to provide performance assurance compensation in appropriate amounts;
 - 3) Require the respondent to post a sufficient performance bond or other security to assure that the respondent corrects the violation within the time that the Board prescribes;
 - 4) Enforce any remedy provision of the EMSA, and
 - 5) Order other relief as appropriate.
- e) The Clerk will publish the order and opinion with the vote of each Board Member recorded and will notify the parties required to be notified of the hearing from which the order arose of the order and opinion.

(Source: Added at 23 Ill. Reg. 269 7, effective 11/1/1993)

Section 106.958 Burden of Proof

The Agency has the burden to prove, by a preponderance of the evidence, that there has been deficient performance under the EMSA, as set forth in Section 106.954(a) of this Subpart.

(Source: Added at 23 Ill. Reg. 269 7, effective 11/1/1993)

Section 106.960 Motions, Responses

- a) All motions before a hearing must be presented to the hearing officer at least 10 days before the date of the hearing.
- b) The complainant's motion to voluntarily dismiss an action as to any or all claims must be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time before the Board issues its decision.
- c) All motions must be served on all parties, including the Agency and its representative and the hearing officer, with proof of service.
- d) Unless made orally on the record during a hearing or unless the hearing officer directs otherwise, a motion must be in writing, must state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on and, when appropriate, by a proposed order.
- e) Within 7 days after a written motion is served, or another period that the Board or hearing officer may prescribe, a party may file a response to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties will be deemed to have waived the objection to the motion, but the waiver of objection does not bind the Board. The moving party does not have the right to reply, except as

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- f) the hearing officer or the Board permits.
No oral argument will be heard on a motion before the Board unless the Board directs otherwise. A written brief may be filed with a motion or an answer to a motion.
- g) The hearing officer may rule upon all motions, except that the hearing officer has no authority to dismiss, or rule upon a motion to dismiss, or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof.
- h) No interlocutory appeal of a motion may be taken to the Board from a ruling of the hearing officer.
- i) After the hearing, the Board may review the hearing officer's rulings. The Board will set aside the hearing officer's ruling only to avoid material prejudice to the rights of a party. The hearing officer, if a member of the Board, may vote upon motions to review his or her rulings as hearing officer.
- j) Unless the Board orders or this Subpart provides otherwise, the filing of a motion will not stay the proceeding or extend the time to perform any act.

(Source: Added at 23 Ill. Reg. 269, effective 1/1/1990.)

Section 106.962 Intervention

- a) Upon timely written application and subject to the need to conduct an orderly and expeditious hearing, the hearing officer will permit a person to intervene in an involuntary termination proceeding under this Subpart if the person submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card at hearing under the procedures set forth in 35 Ill. Adm. Code 187.404, or is named or listed in the respondent's EMSA as a stakeholder, and if the Board's final order may adversely affect him or her.
- b) The applicant must file 10 copies of a petition to intervene with the Board and serve copies on each party not later than 48 hours before the hearing. The hearing officer may permit a person to intervene at any time before the beginning of the hearing when that person shows good cause for the delay.
- c) An intervenor has all the rights of an original party, except that the intervenor is bound by orders issued before the hearing officer permitted the intervenor to intervene and the intervenor cannot raise issues that were raised or were required to be raised at an earlier stage of the proceeding.

(Source: Added at 23 Ill. Reg. 269, effective 1/1/1990.)

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Section 106.964 Continuances

The hearing officer will grant a motion to continue an involuntary termination proceeding under this Subpart when justice requires. All motions to continue must be supported by an affidavit or written motion before the hearing officer by the person or persons with knowledge of the facts that support the motion. However, if the Board determines that any involuntary termination proceeding under this Subpart is not proceeding expeditiously, the Board may order actions that it deems appropriate to expedite the proceeding.

(Source: Added at 23 Ill. Reg. 269, effective 1/1/1990.)

Section 106.966 Discovery, Admissions

- a) Discovery, except requests to produce documents, admit facts and state the identity and location of persons with knowledge of facts, as set forth in subsection (b) of this Section, is not permitted unless the hearing officer orders otherwise.
- b) Regarding any matter not privileged, the hearing officer may order a party to produce documents and to state the identity and location of persons with knowledge of facts upon the written request of any party when parties cannot agree on the legitimate scope of the requests. It is not a ground for objection that the documents will be inadmissible at hearing if the information sought appears reasonably calculable to lead to the discovery of admissible evidence or is relevant to the subject matter involved in the pending action.
- c) The hearing officer may order a party:

- 1) To state the identity and location of persons with knowledge of relevant facts.
- 2) To produce evidence that a party controls or possesses so that it may be inspected, copied or duplicated. The order may grant the right to reasonably inspect the pilot protect.
- d) The hearing officer may at any time on his or her own initiative, or on motion of any party or witness, make a protective order as justice requires. The protective order may deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party who obtains the materials consistent with Sections 7 and 7.1 of the Act.
- e) All objections to rulings of the hearing officer must be made in the record.
- f) Section 106.960(d), (e), (f), (g), (h), (i) and (j) of this Subpart applies regarding procedures to rule on objections.
- g) Failure to comply with any ruling will subject the person to sanctions under 35 Ill. Adm. Code 101, Subpart J.
- h) Request to Admit Facts. A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request that the latter admit the truth of any

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specified relevant fact set forth in the request.

i) Request to Admit to the genuineness of Document. A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request to admit to the genuineness of any relevant documents described in the request. Copies of the document must be served with the request unless copies have already been furnished.

ii) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 15 days after service under subsection (h) or (i) of this Section, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement that denies specifically the matters on which the admission is requested or that sets forth in detail the reasons why the party cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If a party objects in writing to a part of the request, the remainder of the request must be answered within the period designated in the request. A denial must fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, the party must specify so much of it as is true and deny only the remainder. The hearing officer will hear any objection to a request or to an answer upon prompt notice and motion of the party making the request.

k) Effect of Admission. Any admission made under this Section is for the purpose of the pending action only. It does not constitute an admission by the party for any other purpose and may not be used against the party in any other proceeding.

l) Expenses of Refusal to Admit. If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial in response to the request, and if the party requesting the admissions later proves the genuineness of the document or the truth of the matter of fact, the latter party may apply to the Board for an order, under 35 Ill. Adm. Code 101, Subpart J, for payment of reasonable expenses incurred.

(Source: Added at 23 Ill. Reg. 2697, effective 11/16/1992)

Section 106.968 Subpoenas

a) Upon any party's timely motion to the Board, or on motion of the hearing officer or the Board, the hearing officer or the Board may issue a subpoena to attend a hearing. The subpoena may include a command to produce evidence reasonably necessary to resolve the matter under consideration, subject to this Subpart's limitations on

discovery. A copy of the subpoena must be served upon the Clerk. If the witness, other than a respondent or owner or operator of a pilot project, is a non-resident of the State, the order may provide terms and conditions regarding his or her appearance at the hearing that are just, including payment of his or her reasonable expenses.

b) Every subpoena must state the title of the action and command each person to whom it is directed to attend and give testimony at the time and place specified.

c) The hearing officer or the Board, upon motion made promptly and in any event at or before the time specified for compliance with the subpoena, may quash or modify the subpoena if it is unreasonable and oppressive.

d) Failure of any witness to comply with a Board subpoena will subject the witness to sanctions under 35 Ill. Adm. Code 101, Subpart J.

(Source: Added at 23 Ill. Reg. 2697, effective 11/16/1992)

Section 106.970 Settlement Procedure

a) All parties to any case in which a settlement or compromise is proposed must file with the Clerk before the time of the scheduled hearing a written statement, signed by the parties or their authorized representatives, that outlines the nature of, the reasons for, and the purpose to be accomplished by, the settlement. The statement must contain:

- 1) A full stipulation of all material facts that pertain to the nature, extent and causes of the alleged violations;
 - 2) The nature of the relevant parties' operations and control equipment;
 - 3) Any explanation for past failures to comply and an assessment of the impact on the public from the failure to comply;
 - 4) Details about future plans for compliance, including a description of additional control measures and the dates on which they will be implemented; and
 - 5) The proposed performance assurance payment, if any.
- b) If an agreed settlement is filed under this Section, the Board may dismiss the case without holding a hearing.

(Source: Added at 23 Ill. Reg. 2697, effective 11/16/1992)

Section 106.972 Authority of Hearing Officer, Board Members and Board Assistants

a) The hearing officer has the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. The hearing officer has

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all powers necessary to these ends including, but not limited to, the authority to:

- 1) Issue subpoenas orders;
 - 2) Rule upon objections to discovery orders;
 - 3) Make protective orders as justice requires, which may deny limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party who obtains the materials;
 - 4) Administer oaths and affirmations;
 - 5) Rule upon offers of proof, receive evidence and rule upon objections to introducing evidence, subject to Section 106.974(b) of this Subpart;
 - 6) Requisite the course of the hearings and the conduct of the parties and their counsel;
 - 7) Examine witnesses solely to clarify the record of the hearing. When any party is not represented by counsel, the hearing officer may examine and cross-examine any witness to insure a clear and complete record. However, the hearing officer may not exclude exhibits or other testimony because of the examination unless all parties agree; and
 - 8) Except as otherwise provided, consider and rule as justice may require upon motions appropriate to an adjudicative proceeding.
- b) Any Board Member or assistant to a Board Member present at the hearing may advise the hearing officer and may interrogate witnesses but does not have the authority to rule on objections or motions or to overrule the hearing officer during the hearing.

(Source: Added at 23 Ill. Reg. 2507, effective FEB 16 1995)

Section 106.974 Order and Conduct of Hearing

- a) The following will be the order of all involuntary termination for good cause:

- 1) Present, argue and dispose of preliminary motions on the matters that the statement of deficiency raises;
- 2) Present opening statements;
- 3) Complainant's case in chief;
- 4) Respondent's case in rebuttal;
- 5) Complainant's case in rebuttal;
- 6) Statements from interested citizens, as the hearing officer authorizes;
- 7) Complainant's opening argument, which may include legal argument;
- 8) Respondent's closing argument, which may include legal argument;
- 9) Complainant's closing argument, which may include legal argument;
- 10) Present and argue all motions before submitting the transcript to the Board; and

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- ll) A schedule to submit briefs to the Board.
- b) All hearings under this Subpart will be public, and any person not a party and not otherwise a witness for a party may submit written statements relevant to the subject matter of the hearing. Any party may cross-examine any person who submits a statement. If the person is not available to be cross-examined upon timely request, the written statement may be stricken from the record. The hearing officer will permit any person to offer reasonable oral testimony whether or not a party to the proceedings.

- c) All witnesses will be sworn.
- d) At the conclusion of the hearing, the hearing officer will make a statement about the credibility of witnesses. This statement will be based upon the hearing officer's legal judgment and experience and will indicate whether he or she finds credibility to be at issue in the case and if so, the reasons why. This statement will become a part of the official record and will be transmitted by the hearing officer to each of the parties. No other statement will be made or be appropriate unless the Board orders otherwise.

(Source: Added at 23 Ill. Reg. 2507, effective FEB 16 1995)

Section 106.976 Evidentiary Matters

The provisions of 35 Ill. Adm. Code 103.204 through 103.210 regarding admissible evidence, written narrative testimony, official notice, viewing premises, admitting business records, examining adverse parties or agents and hostile witnesses and compelling them to appear at hearing, and amendment and variance of pleadings and proof will apply to proceedings under this Subpart.

(Source: Added at 23 Ill. Reg. 2507, effective FEB 16 1995)

Section 106.978 Post-Hearing Procedures

The provisions of 35 Ill. Adm. Code 103.220 through 103.223 regarding default, transcripts, the record, briefs and oral arguments will apply to proceedings under this Subpart.

(Source: Added at 23 Ill. Reg. 2507, effective FEB 16 1995)

Section 106.980 Motion After Entry of Final Order

Within 35 days after the Board adopts a final order, any party may file a motion to rehear, modify or vacate the order or for other relief. Response to the motion must be filed within 14 days after the motion is filed. A motion filed within 35 days stays enforcement of the final order.

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(Source: Added at 23 Ill. Reg. 2697, effective 1/1/99.)

Section 106.982 Relief from Section 106.956 Final Orders

- a) The Board may at any time correct errors in orders or other parts of the record that arise from oversight or omission or clerical mistakes. The Board may do so on its own initiative or on the motion of any party and after notice, if any, as the Board orders. During the pendency of an appeal, the Board may correct the mistakes before the appeal is docketed in the appellate court. While the appeal is pending, the Board may correct the mistakes with leave of the appellate court.
- b) On motion and upon terms that are just, the Board may relieve a party or a party's legal representative from a final order, for the following:
- 1) Newly discovered evidence that by due diligence could not have been discovered in time under Section 106.956 of this Subpart; or
 - 2) Fraud (whether previously denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
 - 3) Void order.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the Board entered the order but the motion is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties must be notified under Section 106.950(b) of this Subpart.
- d) This motion must be filed with the Board within 60 days after entry of the order.

(Source: Added at 23 Ill. Reg. 2697, effective 1/1/99.)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notice was received by the Joint Committee on Administrative Rules during the period of February 9, 1999 through February 16, 1999 and has been scheduled for review by the Committee at its March 16, 1999 meetings in Springfield. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start Of First Notice Meeting
3/25/99	Illinois Housing Development Authority, National Affordable Housing Act (HOME) Program (47 Ill Adm Code 371)	12/11/98 22 Ill Reg 21221

Rules acted upon during the calendar quarter from Issue 1 through Issue 16 are listed in the Issues Index by Title number, Part number and Issue number. For example, 50 Ill. Adm. Code 2500 published in Issue 1 will be listed as 50-2500-1. The letter "R" designates a rule that is being repealed. Inquiries about the Issues Index may be directed to the Administrative Code Division at 217-782-4414 or jfratale@cgate.sos.state.il.us (Internet address).

PROPOSED**ADOPTED**

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2-3001-6	77-300-4
2-3001-6	77-330-4
2-3002-6	77-340-4
8-600-2	77-350-4
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SECRETARY OF STATE
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